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VIA HAND DELIVERY

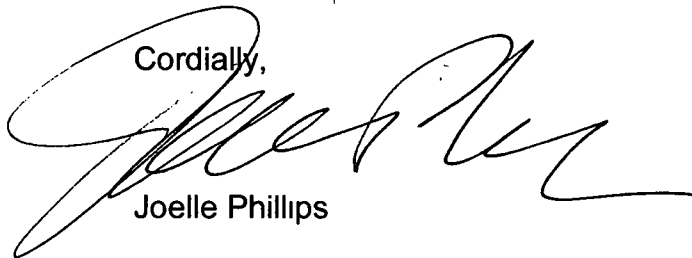
Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *BellSouth Telecommunications, Inc. Tariff to Revise Directory Assistance
and Directory Assistance Call Completion (Tariff No. 04-01434)*
Docket No. 04-00416

Dear Chairman Miller:

Enclosed are the original and fourteen copies of BellSouth's *Response to Consumer Advocate's Complaint and Petition to Intervene*. Copies of the enclosed are being provided to the Consumer Advocate.

Cordially,



Joelle Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc. Tariff to Revise Directory Assistance and Directory Assistance Call Completion (Tariff No. 04-01434)*

Docket No. 04-00416

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO CONSUMER ADVOCATE'S COMPLAINT AND
PETITION TO INTERVENE

BellSouth Telecommunications, Inc. ("BellSouth") files this *Response to the Complaint and Petition to Intervene* filed by the Consumer Advocate in opposition to BellSouth's proposed tariff No. 04-01434¹, and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

INTRODUCTION

BellSouth operates under its price regulation plan. Consequently, the prices of its services – including Directory Assistance – are governed by the statutory requirements of price regulation. The *Complaint* filed by the CAD makes no reference or citation to the Price Regulation Statute and conveniently ignores the pricing flexibility permitted by that statute.

BellSouth filed its tariff to revise certain Directory Assistance and Directory Assistance Call Completion terms and charges. The revision addresses specifically the charge to be applied for Directory Assistance calls. While BellSouth formerly applied

¹ BellSouth's tariff was properly permitted to become effective on January 11, 2005. The CAD's scant, three-page *Complaint* did not seek suspension of the tariff, and, even if the *Complaint* had included such a request, it would have been properly denied. The Consumer Advocate's *Complaint* did not allege with particularity how the complaining party (in this case, the Consumer Advocate) would be injured by the tariff, did not allege that the tariff violated a specific law, and did not demonstrate that the Consumer Advocate had a substantial likelihood of prevailing on the merits of its *Complaint*. Each of these separate requirements applies to a party seeking suspension of a tariff pending hearing as established in T.C.A. § 65-5-101(c)(3). While the CAD's *Complaint* was not sufficient to achieve suspension of the tariff, the TRA may still "choose to convene a contested case, or decline to convene a contested case, in its own discretion, to promote the public interest." T.C.A. § 65-5-101(c)(3)(c). As discussed below, however, the CAD's *Complaint*, which is short on substance, offers no valid basis to conclude that the tariff warrants further consideration by the TRA.

no charge to the first six calls per billing period, BellSouth's tariff changes that pricing to the rates and charges set forth in the Tariff at Section A3.13.1, which applies charges to all calls after the first three calls, except in the case of disabled persons or persons 65 and older, as set forth in the tariff. While this change reduces the number of free directory assistance calls for non-disabled customers, the tariff implements a new benefit to the disabled that did not previously exist. ***Specifically, for the first time, BellSouth's tariff provides for both free Directory Assistance and free Call Completion for the disabled.***

As a price regulated entity, BellSouth is limited in its ability to change the price it charges for Directory Assistance only by its existing headroom. BellSouth has existing headroom to cover the revenue changes associated with this tariff change. In its *Complaint*, the Consumer Advocate cites two (1997 and 1999) TRA orders as creating a ***general*** rule requiring a certain number of free Directory Assistance calls, but those orders addressed specific tariffs, which are easily distinguished from this tariff. In fact, contrary to the Consumer Advocate's *Complaint*, there is no binding TRA precedent imposing any general restriction on Directory Assistance Terms and Charges. Moreover, BellSouth's Directory Assistance charges have been changed – without challenge – twice since the cited orders were issued.

In addition, the Consumer Advocate's policy contentions are misplaced, as the Consumer Advocate's *Complaint* would incent BellSouth to either raise Directory Assistance prices for all customers, or not extend the free Directory Assistance and Call Completion to disabled persons as set forth in the proposed tariff.

I. The Law Governing BellSouth's Pricing

Directory Assistance is a nonbasic service, and the TRA has long recognized that to be the case, pursuant to T.C.A. § 65-5-108(a).² While the Consumer Advocate attempted in 1997 to convince the Authority otherwise, the majority of the TRA voted to reject the Consumer Advocate's arguments that Directory Assistance should be treated as a basic telecommunications service. This decision was upheld by the Tennessee Court of Appeals.³ BellSouth's proposed tariff altering the charges imposed for this nonbasic service is consistent with the requirements in T.C.A. § 65-5-109 establishing price regulation.

The Consumer Advocate's *Complaint* cites two TRA orders and urges that these orders together "establish the allowance of six Directory Assistance calls per month at no charge."⁴ The Consumer Advocate is wrong.

A. The Two Orders Relied Upon by the CAD Addressed Specific Tariffs, Which Did Not Contain the New Benefits to the Disabled Provided by the New BellSouth Tariff.

The two orders cited are orders addressing individual tariffs, and these orders do not establish any generally applicable rule requiring carriers in Tennessee to provide six Directory Assistance calls per month at no charge. In each of these orders, the Authority considered a particular tariff, and neither of these tariffs provided for free Directory Assistance and Call Completion for the disabled, as established in BellSouth's Tariff No. 04-01434. Consequently, while the Authority did, in these earlier cases, approve two tariffs for Directory Assistance that included six free calls to Directory

² See *Order Approving in Part and Denying in Part Tariff No. 96-201*, Docket No 96-01423, at p. 17.

³ See *Opinion, Consumer Advocate Division v Tennessee Regulatory Authority*, No M1997-00238-COA-R3-CV (Tenn Ct. Appeals), July 18, 2002, p 5 (noting that TRA's statutory construction supporting its decision that directory assistance is non-basic "is the correct one")

⁴ CAD *Complaint* at ¶ 5

Assistance per month at no charge, neither order stated that six free Directory Assistance calls was required by law. Moreover, neither of these orders addressed a tariff, like the current proposed tariff, in which a change in the number of free Directory Assistance calls available was proposed in conjunction with a new benefit (free Directory Assistance and free Call Completion) to disabled customers. Neither order can be fairly cited as establishing a legal obligation to provide a particular number of Directory Assistance calls per month at no charge to all subscribers.

B. Obviously The Orders Did Not Set Terms for Directory Assistance in Stone Because BellSouth's Price for Directory Assistance Has Been Changed Twice Since the Issuance of Those Orders.

Next, it is particularly noteworthy that the referenced orders also approved (and thus established) rates for Directory Assistance. Notwithstanding those earlier Orders, BellSouth's Directory Assistance rates have been changed twice since the issuance of the two orders cited. This clearly establishes that the cited orders have not set any permanent standards or requirements for Directory Assistance in Tennessee.

C. The Consumer Advocate's Discussion of the Cited Orders Makes No Mention of the Substantial Changes in the Tennessee Market Since The Issuance of These Orders.

The Consumer Advocate's characterization of these orders as permanently freezing Directory Assistance terms and charges, is incorrect. First, the two orders cited were issued in 1997 and 1999. No one could reasonably argue that Tennessee's telecommunications market has not developed dramatically in the past six years since these orders were issued. That development has included increases in wireline and intermodal alternatives for Directory Assistance. Moreover, approval of BellSouth's 271 petition in the intervening years is a further, and substantial, indication of the marked change in circumstances since the time these orders were issued.

II. Policy Concerns

As established above, there is no Tennessee law requiring a particular number of free Directory Assistance calls. The Consumer Advocate's *Complaint* describes its "purpose" for intervening as "defending the **policy** established by the TRA that Tennessee subscribers be allowed six Directory Assistance calls per month at no charge."⁵ The CAD further urges that the tariff "is contrary to this **policy**." These references to policy rather than law, are a tacit admission that there is no legal requirement – and no legal precedent – that establish a permanent rule regarding Directory Assistance calls at no charge. In fact, **neither** of the orders cited has any policy discussion supporting a "hard and fast" rule of six Directory Assistance calls per month. In fact, any such hard and fast rule would be arbitrary and contrary to public policy.

The two cited orders are more properly characterized as orders, in which the TRA balanced the interests of consumers in the context of a **specific** proposed tariff. BellSouth's current proposed tariff appropriately balances consumer needs, and, in fact, the tariff provides an enhanced benefit to customers with a particular and specialized need for Directory Assistance and Call Completion. There is certainly no Authority precedent, nor is there any statutory requirement, that BellSouth provide this enhanced benefit to the disabled. Instead, BellSouth has chosen to do so and balanced this program against business needs. The resulting tariff is an appropriate compromise between these competing concerns.

In evaluating the policy concerns raised by the Consumer Advocate, the Authority must consider the policy ramifications of setting an arbitrary six-free-calls rule.

⁵ CAD *Complaint* at ¶ 6 (emphasis added)

Such a rule would deter carriers from developing precisely the type of public interest benefits established by BellSouth's tariff in this case. The Consumer Advocate's policy-based argument, in fact, would tie the hands of the Authority and carriers, requiring them to continue offering an arbitrary number of free Directory Assistance calls to all, rather than altering the benefit to extend an enhanced benefit to disabled customer who have a particularized need for Directory Assistance and Call Completion. As a practical matter, denying BellSouth's tariff will deter BellSouth and other carriers from developing programs such as this for the disabled.

CONCLUSION

For the foregoing reasons, BellSouth urges the Authority to deny the *Complaint* of the Consumer Advocate in light of the Consumer Advocate's failure to raise any legal argument in support of its position and in light of the obvious flaws in its policy arguments. The TRA has been vested by the General Assembly with discretion to choose when to convene a contested case.⁶ In this matter, a contested case will not serve the public interest because the Consumer Advocate has raised no legitimate basis on which this tariff, which extends new and enhanced benefits to the disabled, should be revoked.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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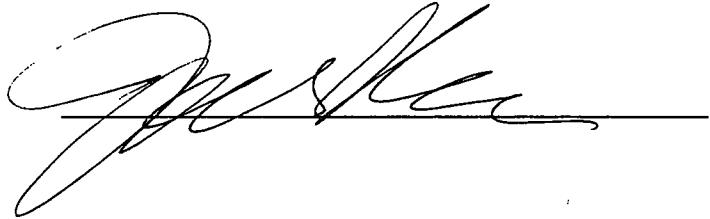
⁶ T C A § 65-5-101(c)(3)(c)

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2005, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
☐ Mail
☒ Facsimile
☐ Overnight
☒ Electronic

Steven R. Butler, Esquire
Office of Tennessee Attorney General
P. O. Box 20207
Nashville, Tennessee 37202

A handwritten signature in black ink, appearing to read "S. R. Butler", is written over a horizontal line.